Appendix B

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

EDDIE DASSIN, INC., a California Corporation,

Appellant,

v.

EASTERN AIRLINES, INC., a Corporation,

Appellee.

No. 73-2113

OPINION

FILED

AUG 5 1974

U. S. COURT OF APPEALS CLERK

Appeal from the United States District Court for the Central District of California

Before: ELY and CARTER, Circuit Judges, and EAST, District Judge.*

ELY, Circuit Judge:

Appellant, Eddie Dassin, Inc. (hereinafter "Dassin"), is a California corporation which designs and sells knitwear, primarily sweaters, to wholesale customers. Dassin instituted suit against Eastern Airlines, Inc. (hereinafter "Eastern"), for Eastern's alleged negligence in connection with two separate shipments of garments to Puerto Rico.[1/] The District Court found that Eastern, after taking possession of the goods, negligently delayed the delivery of one shipment for approximately two months, and that the consignee, Marlene Kramer, Inc. (hereinafter "Marlene") was justified in refusing to accept the goods because of the tardiness of the delivery. As to Dassin's claim, the court found that the second shipment was lost because of Eastern's negligence, and that Dassin was liable to the consignee.

*Honorable William [illegible], United States District Judge, Eugene, Oregon, sitting by designation.

-1-

AUG 7 - 1974

The court concluded adversely to Dassin, however, that Eastern's liability was limited to damages calculated at $0.50 per pound, rather than damages for the actual value of the garments.[2] The court based its conclusion on Tariff Rule No. 52, filed by Eastern with the Civil Aeronautics Board pursuant to 49 U.S.C. § 1373. We affirm.

In October of 1970 Dassin and Eastern entered into a written agreement in which Eastern agreed to transport two shipments of ladies' apparel from Los Angeles, California to San Juan, Puerto Rico. Eastern further agreed to deliver the shipments to Darlene in Cayey, Puerto Rico. The shipping contract was entered into by Dassin through Steve Goldberg & Company (hereinafter "Goldberg"), an authorized cargo agent for certain airlines, including Eastern. The agreement was embodied in two shipping documents[3] which were completed by Goldberg. In one space designated "DECLARED VALUE FOR CARRIAGE," each Airway Bill contained the notation "MAX FREE." The term "MAX FREE" is an abbreviation of "maximum free value" and indicates that a shipment is protected only to the amount of the tariff limit. In another space designated "NATURE AND QUANTITY OF GOODS," however, there appeared a description and estimated value of the garments.

Since the District Court found that Eastern was negligent in shipping the goods, both parties agree that Eastern's Tariff Rule No. 52 governs the disposition of the appeal. See Tishman & Lipp, Inc. v. Delta Air Lines, 413 F.2d 1401 (2d Cir. 1969); Blair v. Delta Air Lines, Inc., 344 F. Supp. 360 (S.D. Fla. 1972), aff'd mem., 477 F.2d 564 (5th Cir. 1973). Rule 52(A) provides in part:

> "[A] shipment shall have a declared value of $0.50 per pound but not less than $50.00 unless a higher value is declared on the Air Bill at the time of receipt of the shipment from the shipper, and

Airway Bills, he also explained that he was not personally involved in the transaction. Moreover, it is undisputed that Dassin failed to instruct either Eastern or Goldberg that an additional valuation charge should be assessed, nor did it pay an additional amount. In line with its own understanding of the terms of the agreement, Eastern did not in fact assess an additional shipping charge.

Based on the foregoing facts, the District Court found that Dassin did not make a declaration of value for the purpose of obtaining increased protection under Eastern's Tariff Rule No. 52.

Under the applicable tariff rule the shipper, Dassin, had the obligation to inform the carrier that it desired protection in excess of the tariff limit. Additionally, a shipper, in order to obtain enlarged coverage, must agree to pay the carrier the additional transportation charge specified in Tariff Rule No. 52. Obviously, the Airway Bills pertaining to the subject shipments did not clearly indicate a desire on the part of Dassin to acquire the additional coverage. There substantial evidence at trial which supports the conclusion that neither party intended that the garments be shipped at th higher rate. Moreover, there was ample evidence to support the court's finding that Dassin did not inform the carrier tha it desired the additional coverage. The District Court's dispositive factual findings are amply supported by substantia evidence, and it correctly concluded that Dassin's recovery was restricted by the tariff limitation of 50 cents per pound.

Dassin's contention that the trial judge erroneously failed to consider certain hearsay evidence is without merit.

AFFIRMED.

FTI-Dandetone
P-20-CO-8026-4301

Footnote 1/ (Reference page 1)

Jurisdiction was based on diversity of citizenshi; 28 U.S.C. § 1332.

Footnote 2/ (Reference page 2)

On Dassin's first claim, the court held that Dassin was entitled to damages in the amount of $1,800.50, that Dassin could recover the goods, which remained in East possession. Additionally, the District Court held that Dass was entitled to $1,786.50 on its second claim.

Footnote 3/ (Reference page 2)

The two documents were designated "Airway Bill N. 007-0312 8366" and "Airway Bill No. 007-0312 8370."

THE BRIEF SHOP

10844 VENTURA BOULEVARD
NORTH HOLLYWOOD, CA. 91604

LAWYERS BRIEF SERVICE
LEGAL & COMM. PRINTING

(213) 877-8620 763-2965